



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-P-M-

DATE: MAR. 27, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a resident physician, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a resident physician in the Department of Radiology at the [REDACTED]. The record includes an undated letter from [REDACTED] program director of [REDACTED] diagnostic radiology residency, indicating that [REDACTED] “has offered [the Petitioner] a faculty position working with the Cardiothoracic Imaging section and Nuclear Medicine division” set to begin in July 2019.³ The evidence indicates that, in both of these positions, clinical care duties comprise most of the projected hours, with small amounts of time devoted to teaching and research.

A. Substantial Merit and National Importance of the Proposed Endeavor

In an August 2017 letter accompanying the Form I-140, the Petitioner indicated that she intends to continue her “research in diagnostic radiology. She desires to utilize her training and skills in further research endeavors in positron emission tomography-computed tomography (PET-CT) and positron emission tomography-magnetic resonance imaging (PET-MRI), in the allied fields of nuclear medicine and molecular imaging.” The Petitioner further stated that her “research interests are in the role of PET-CT and molecular imaging in the evaluation and treatment of heart disease, cancer patients, patients with liver and kidney failure, and patients with infectious diseases.”

The initial submission offered information about nuclear medicine and molecular imaging from the [REDACTED]. This information explained that the healthcare benefits of nuclear medicine and molecular imaging include “gaining a better understanding of the pathways of disease, quickly assessing new drugs, improving the selection of therapy, monitoring patient response to treatment, and finding new ways to identify individuals at risk for disease.” In addition, the Petitioner provided letters from medical colleagues stating that her research has the potential to improve patient care in the imaging field in the United States.

The Director acknowledged the broader implications of the proposed research, but noted that according to descriptions of the Petitioner’s current and future positions, the vast majority of her “time is and will be spent on clinical duties” at [REDACTED] rather than medical imaging research. The Director

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

determined therefore that the limited amount of time the Petitioner intended to devote to her proposed research was insufficient to meet the first prong of the *Dhanasar* framework. In addition, while the Petitioner asserts she is “expected to function either as a principal investigator or as a collaborating physician with research projects,” the record does not include sufficient information or supporting evidence identifying the specific research projects she intends to undertake at [REDACTED] to demonstrate the nature and extent of her proposed research.⁴ Accordingly, we agree with the Director that the Petitioner’s evidence relating to her proposed research is not sufficient to satisfy *Dhanasar*’s first prong.

With regard to the Petitioner’s proposed “clinical care duties,” an April 2018 letter from [REDACTED] indicated that the Petitioner “will provide advanced imaging expertise to the general population of patients referred into the [REDACTED].” The Petitioner contends that because [REDACTED] treats patients from throughout the country and “is among the 20 largest and best equipped in the nation,” the “Petitioner by association, impacts the healthcare interests of the United States,” and therefore her proposed clinical care duties are of national importance.

Furthermore, regarding the Petitioner’s proposed teaching duties, she presented a letter from [REDACTED] professor of radiology at [REDACTED] stating:

[The Petitioner’s] teaching duties to residents rotating through the cardiothoracic section will include daily mentoring in terms of educating residents to read and interpret chest radiographs, chest CTs, cardiac CT & MR, cardiac angiography, in addition to performing thoracic interventional procedures. She will also be required to provide residents with at least four cardiothoracic didactic lectures per year

[REDACTED] further indicated that the Petitioner’s education of [REDACTED] radiology residents “benefits the United States as a whole, as [REDACTED] trains residents to provide excellent patient care throughout the country after they leave [REDACTED].” In addition, [REDACTED] asserted: “In the past ten years, 62% of [REDACTED] radiology residents went to hospitals that provide services to the entire Southeast region of the United States (AL, MS, LA, TN, FL, and GA), while 30% have gone on to provide services across the nation (outside the Southeast region).” The Petitioner maintains that [REDACTED] “hosts some of the top medical programs in America, and provides training to the next generation of physicians not just from Alabama but from all over the United States, thus establishing that [the] Petitioner’s teaching duties are of national importance.”

With respect to the Petitioner’s care of patients and educational duties at [REDACTED], while these endeavors have substantial merit, the record does not establish that her clinical and instructional work would impact the fields of diagnostic radiology, nuclear medicine, and molecular imaging or the U.S. healthcare industry more broadly, as opposed to being limited to the patients she serves and her medical trainees. The issue here is not the broader implications of [REDACTED] and its radiology residency program or their cumulative effects on U.S. healthcare, but rather the potential prospective impact of the Petitioner’s specific proposed work as a medical educator and radiology clinician. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical

⁴ In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

work as a radiologist and activities as a medical instructor do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, the Petitioner’s clinical care and teaching duties do not meet the first prong of the *Dhanasar* framework. In addition, we agreed with the Director’s determination that, due to the small amount of time the Petitioner intended to devote to research and the lack of evidence regarding the nature or extent of her proposed research, it was insufficient to meet the first prong of the *Dhanasar* framework. However, because the Director acknowledged that the Petitioner’s proposed “research has broader implications for the field” (unlike her clinical care and teaching duties), our analysis under this prong will focus on whether she is well positioned to advance her proposed research. For the reasons discussed below, even if the Petitioner’s proposed research had met *Dhanasar*’s first prong, the evidence is insufficient to demonstrate that she is well positioned to advance that research under prong two.

The record includes documentation of the Petitioner’s curriculum vitae, academic credentials, medical certifications and license, published articles, and conference presentations. She also offered citation and download reports for her articles, and reference letters discussing her medical training, clinical work, and research projects.⁵

In letters supporting the petition, several radiology professors discussed the Petitioner’s research aimed at developing better practices for PET-CT and molecular imaging in the evaluation and treatment of heart disease, cancer patients, patients with liver and kidney failure, and patients with infectious diseases. For example, [REDACTED] chief of imaging at the [REDACTED] asserted that the Petitioner’s “research was able to identify patients whose MPI [Myocardial Perfusion Imaging] scans worsened and was able to identify the patients who had the highest risk of mortality from CAD [Coronary Artery Disease] in this high risk group and suggest more close clinical surveillance” The record includes a Springer citation report showing that the Petitioner’s article in *Journal of Nuclear Cardiology* presenting this work has been cited in ten articles.⁶ She does not, however, offer comparative statistics demonstrating the significance of this level of citation within her field, nor does the evidence otherwise demonstrate that her published and presented research constitutes a record of success or a level of interest in her work from relevant parties sufficient to meet this prong.

In addition, [REDACTED] professor of radiology at [REDACTED] stated that the Petitioner “recently authored a paper on the imaging of cardiac sarcoid” and that she is “at the forefront of developing new imaging techniques and algorithms.” Similarly, [REDACTED] professor of radiology at [REDACTED] indicated that the Petitioner’s research “projects have resulted in presentations at prominent national meetings and in publications in high impact peer reviewed

⁵ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁶ Six of the ten articles listed in the Springer citation report reflect self-citations by [REDACTED] the Petitioner’s coauthor.

journals.” The Petitioner presents information from Springer Link showing that three of her articles in *Journal of Nuclear Cardiology* have been downloaded hundreds of times, but she has not presented evidence illustrating the significance of this information, or establishing that her research has been implemented, utilized, or applauded by those viewing it. The downloads of the Petitioner’s articles corroborate that she has disseminated her findings, but they are not sufficient to demonstrate a record of success of, or interest in, her research.

The record demonstrates that the Petitioner has conducted, published, and presented research during her diagnostic radiology career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that her published and presented work has been frequently cited by independent researchers or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in her area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her education, research experience and accomplishments, past funding she received from government entities, and because of her long-term plan for continued work in the United States. However, as the Petitioner has not established that she meets the first and second prongs of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

Matter of P-P-M-

ORDER: The appeal is dismissed.

Cite as *Matter of P-P-M-*, ID# 2591797 (AAO Mar. 27, 2019)